



STATE OF MICHIGAN
17TH JUDICIAL CIRCUIT COURT

JUVENILE CENTER
1501 CEDAR STREET, NE
GRAND RAPIDS, MICHIGAN 49503-1390

March 14, 2011

As representatives of the 17th Circuit Court-Family Division, we are writing to request changes be made in SB 188 and 189 before being presented for further consideration by the House, Senate and the Governor of Michigan. While most of the bill only meets the minimum requirements of the SORNA provisions in the Adam Walsh Act, SB 188 includes juvenile offenses not specified as necessary to meet minimum requirements. Specifically, the final guidelines presented by the SMART Office of the OJP state:

“SORNA does not require registration for juveniles adjudicated delinquent for all sex offenses for which an adult sex offender would be required to register, but rather requires registration only for a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes (or attempts or conspiracies to commit such crimes). Considering the relevant aspects of the federal “aggravated sexual abuse” offense referenced in section 111(8), it suffices for substantial implementation if a jurisdiction applies SORNA’s requirements to juveniles at least 14 years old at the time of the offense who are adjudicated delinquent for committing (or attempting or conspiring to commit) offenses under laws that cover:

- engaging in a sexual act with another by force or the threat of serious violence; or
- engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.
- ‘sexual act’ for this purpose should be understood to include any degree of genital or anal penetration, and any oral-genital or oral-anal contact”

Senate Bill 188 currently would require all juveniles found guilty of CSC 1st, CSC 2nd, CSC 3rd and Gross Indecency to register as Tier 3 sex offenders, regardless of the absence of physical force, coercion, threat of serious physical violence or rendering the victim unconscious or drugging the victim, as stated in the SORNA.

The below recommendation is made by representatives of the Adolescent Sexual Offender Treatment Program (ASOTP) of Kent County. The ASOTP is the oldest community-based outpatient treatment program for juvenile sexual offenders in Michigan. Programmatically, the ASOTP therapists have assessed and provided treatment for over 1,500 juveniles since the program inception in 1986. To date, the recidivism rate of that client population has hovered at 5% (0% for female adolescent offenders). The registration of juvenile offenders should be saved for those most at risk to reoffend. Adherence to the SORNA provisions as outlined by the Adam Walsh Act increase the utility of the Michigan Sexual Offender Registration Database by only including the highest risk offenders, rather than including nearly all offenders between the ages of 14-17, as the current legislation proposes.

We are asking the House Judiciary Committee to minimally comply with the SORNA requirements of the Adam Walsh Act as they apply to juvenile offenders. Specifically, we recommend SB 188 and 189 be changed to reflect:

- Registration should not be mandated for juveniles 14-17 for CSC 1st, CSC 2nd, CSC 3rd, CSC 4th or Gross Indecency wherein the age of the victim is the sole consideration. Contrary to popular belief, age of victim is not an accurate indicator of risk for sexual offense recidivism. In fact, most juvenile offenders engage in sexual offenses with children at least 4 or more years younger than themselves
- Juveniles convicted/adjudicated of CSC 2nd or CSC 4th should not be required to register as the dynamics of these offenses do not meet the definition of “sexual act(s)” as outlined by the SMART office.
- Registration of juveniles convicted/adjudicated of CSC 1st or CSC 3rd should be determined by the court based on the above outlined variables as defined by the SMART office (i.e. use of force or threat of serious physical violence or rendering a victim unconscious) rather than simply the age of the victim as proposed in the current bill. Physical violence, threat of violence, rendering of a victim unconscious or drugging a victim can be strong indicators of risk, however these dynamics are rarely present in juvenile sexual offending.
- Gross Indecency should be excluded from the list of offenses requiring registration by juveniles. By definition, a Gross Indecency charge including the use of force, should no longer be Gross Indecency, but rather a CSC offense. Further, there is no definition for Gross Indecency. The statute stems from 19th century law and was intended to be repealed with the formation of the current CSC statutes. It was intended to outlaw oral sex and sodomy amongst gay men and was enacted in 1903 in Michigan. (Oscar Wilde was charged and convicted of engaging in Gross Indecency with men in 1895 and sentenced to two years hard labor.) The text of the current Michigan law reads the same as the **Labouchere Amendment**, also known as **Section 11** of the Criminal Law Amendment Act 1885.
- Juveniles removed from the registry should not be at risk for placement back on the registry following non-sexual offense adjudications or convictions. General delinquent and criminal recidivism are not accurate measures of risk for sexual offense recidivism on their own.
- Juvenile’s required to register as Tier 3 sex offenders should be allowed to petition sooner and more frequently than adult offenders. At no time in a human’s life, besides infancy, do they change as much as they do during adolescence. Juveniles should be allowed to petition for removal in the same manner adults can petition for removal from Tier 1 registration. If a petition were denied, a juvenile should be allowed to re-petition the court after 3 years.

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